

STATE OF MICHIGAN
COURT OF APPEALS

ANDRE BEZEAU,

Plaintiff-Appellee,

v

PALACE SPORTS & ENTERTAINMENT, INC.,

Defendant-Appellant.

UNPUBLISHED
February 28, 2006

No. 258350
WCAC
LC No. 03-000101

Before: Borrello, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Defendant appeals by leave granted an order of the Worker's Compensation Appellate Commission (WCAC) reversing a magistrate's denial of benefits. We vacate the WCAC's decision and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff claims to have developed osteitis pubis (inflammation of the pubic bone) as a result of playing professional hockey. Plaintiff began his professional hockey career during the 1990-1991 season. In 1998, he signed a three-year contract with the Detroit Vipers, a team which played in the International Hockey League and was owned by defendant. The contract provided that if plaintiff sustained an on-ice injury and was unable to play for the team, he would be entitled to his contractual pay, but if he sustained a disabling personal injury, he would not be entitled to the contractual pay.

During off-seasons, plaintiff worked for his father-in law's roofing company. On June 28, 2000, while working on a roofing job, plaintiff fell off a forty-five-foot ladder and landed on a crushed rock driveway. Following the fall, plaintiff began treating with an athletic therapist for soft tissue injuries to his right groin, low back, and right thigh. His condition improved over the course of the next month, but he was uncertain whether he would be able to resume playing professional hockey. As of September 2000, when plaintiff simulated on-ice situations, he noticed that bumping into the boards of the hockey rink caused pain to radiate into his groin. He underwent a series of chiropractic manipulations by Dr. Norm Skjonsberg between September 22 and 29, 2000. Thereafter, plaintiff still felt pain, but believed that he could play hockey.

Prior to the 2000-2001 season, plaintiff was assigned to play for the Providence Bruins. He remained an employee of the Detroit Vipers and defendant, who were responsible for any

worker's compensation benefits necessitated by plaintiff's play with the Bruins. Plaintiff began practicing with the Bruins on October 1, 2000. Plaintiff passed the team physical.

On October 6, 2000, during the first game of the season, an opposing player hit plaintiff's right hip and thigh as he was skating down the boards. Plaintiff's left leg went numb and he had severe discomfort in his groin. He left the game, and has been unable to play professional hockey since.

Plaintiff revisited Dr. Skjonsberg on October 30, 2000. Skjonsberg denied that plaintiff was suffering effects of the June 2000 fall from the ladder and opined that the hit during the hockey game on October 6, 2000, could have caused osteitis pubis.

Plaintiff began treating with Dr. Barnhill in January 2001. Barnhill diagnosed osteitis pubis. Plaintiff had only marginal improvement by May 2001, and in September 2001, plaintiff complained of an increase in pain as his activities increased, as well as bilateral groin pain. Blood testing revealed that plaintiff was HLA-B27 positive, which is indicative of ankylosing spondylitis.¹ Barnhill indicated that osteitis pubis was typical in sports that involved stopping and starting. He opined that the condition was consistent with the October 6, 2000, hit, but admitted that he could not rule out the June 2000 fall as a causative factor.

Dr. Friedman examined plaintiff at defendant's request in October 2002. Friedman stated that plaintiff's medical records suggested a diagnosis of osteitis pubis. Friedman noted that osteitis pubis was greatly increased in persons with positive HLA-B27, and that plaintiff's genetic makeup placed him at increased risk for the condition. He opined that repeated hockey traumas and the June 2000 fall could have contributed to the development of the condition.

The magistrate concluded that plaintiff was disabled, but found evidence of work-relatedness to be lacking. According to the magistrate, plaintiff failed to establish by a preponderance of the evidence that his osteitis pubis was caused or made worse by the checking incident of October 6, 2000. The magistrate noted that ever since plaintiff's fall from the ladder, he had experienced groin pain when skating aggressively, and that there was no significant difference between plaintiff's complaints before and after October 6, 2000.

On appeal to the WCAC, plaintiff argued that he was entitled to benefits if his employment contributed to his disability or aggravated a preexisting condition, and that the evidence clearly showed that his work as a hockey player contributed to, if not caused, his disability. In a 2-1 decision, the WCAC agreed with plaintiff, stating:

In reviewing the magistrate's opinion, we are troubled by her reliance on the notion that plaintiff's proofs were deficient in that they failed to show his work injury was the "single underlying cause" of his condition. We believe

¹ Ankylosing spondylitis is "polyarthritis involving the spine, which is characterized by progressive, painful stiffening of the joints and ligaments. It almost exclusively affects young men." See Medical-dictionary.com.

plaintiff has stated accurately the law applicable to this issue, which allows for the compensability of injuries which result from either a single event or repeated stress of the work, which combines with other causes to contribute to a disability or aggravate a pre-existing condition. . . . The medical proofs, as set forth in plaintiff's brief, are compelling in supporting the proposition that plaintiff's disability was the result of several causation factors—a genetic predisposition to osteitis pubis and other inflammatory conditions, years of hockey trauma, the fall from the ladder while roofing and the hockey-check injury of October 6, 2000. Each testifying medical witness, to one degree or another, cites the combination of those factors in pointing to the causes of plaintiff's condition. [Citations and footnote omitted.]

The WCAC then went on to conclude:

Our analysis of the foregoing record evidence leads us to reach the conclusion, urged by plaintiff-appellant, i.e., that Mr. Bezeau's hockey traumas, including the check injury of October 6, 2000, were contributing factors to his osteitis pubis condition. All of the testifying physicians acknowledge that principle. Plaintiff does not have the burden of proving that his hockey injuries are the sole cause or even the most significant cause of his current disability. It is enough to show that the employment contributes to the disability or aggravates a pre-existing condition We do not find competent, material and substantial record support for the opposite conclusion. [Citations omitted.]

The WCAC must review the magistrate's decision under the "substantial evidence" standard, while we review the WCAC's decision under the "any evidence" standard. *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 709; 614 NW2d 607 (2000). Our review begins with the WCAC's decision, not the magistrate's decision. *Id.* If there is any evidence supporting the WCAC's factual findings, and if the WCAC did not misapprehend its administrative appellate role in reviewing the magistrate's decision, then we must treat the WCAC's factual findings as conclusive. *Id.* at 709-710. We review questions of law in a WCAC order under a de novo standard. *DiBenedetto v West Shore Hosp*, 461 Mich 394, 401; 605 NW2d 300 (2000). A decision of the WCAC is subject to reversal if it is based on erroneous legal reasoning or the wrong legal framework. *Id.* at 401-402.

The WCAC found that the magistrate focused on whether the October 6, 2000, injury alone caused plaintiff's disability, and that that focus was too narrow because a compensable disability may be established where employment contributes to an injury or aggravates a preexisting condition. In our opinion, the WCAC erred.

In describing the manner in which his disability occurred, plaintiff's application for benefits states:

25. Claimant is a professional hockey player, who played for the Detroit Vipers. While playing in a hockey game in Providence, Rhode Island, was hit into boards. Claimant continued to play in game until leg went numb. Diagnosed as osteitis pubis, i.e., inflammation of the pubic bone, caused by the injury. Totally disabled.

In his opening statement at the hearing before the magistrate, plaintiff stated that he had never suffered from osteitis pubis prior to October 6, 2000. In light of the preceding, we would not consider any focus on whether the October 6, 2000, injury alone caused plaintiff's osteitis pubis to have been too narrow, as such focus would have been consistent with the apparent theory advocated by plaintiff.²

In any event, contrary to the WCAC's characterization of the magistrate's decision, the magistrate did not deny benefits simply because plaintiff failed to establish that the October 6, 2000, incident was the "single underlying cause" of the disabling condition. Instead, the magistrate specifically found that plaintiff failed to establish that his disability was caused or aggravated by the incident on October 6, 2000. Therefore, while the magistrate did find that plaintiff's condition was not caused solely by the October 6, 2000, incident, the magistrate also found that that incident did not aggravate or contribute to plaintiff's condition. Consequently, the magistrate's ultimate decision did not narrowly focus on a "single underlying cause," but on whether the incident of October 6, 2000, played any causative role in plaintiff's disability.

However, based on the WCAC's factual findings, any mischaracterization of the magistrate's decision does not warrant relief. In particular, the WCAC found that hockey traumas, including the incident of October 6, 2000, contributed to plaintiff's condition, and concluded that the record did not support a contrary finding. Therefore, even if the WCAC had correctly recognized that the magistrate found that plaintiff's condition was not aggravated by the October 6, 2000, injury, it is clear that the WCAC found no competent evidence to support such a finding. Because under our limited standard of review, there was clearly "any" evidence in the record to support the WCAC's finding that plaintiff's "hockey traumas," including the October 6, 2000 incident, contributed to his osteitis pubis condition, that factual finding must be deemed conclusive. *Mudel, supra* at 709-710.

Although there is evidentiary support for the WCAC's findings of fact, we are not convinced that, from a legal standpoint, the WCAC's decision is proper. The WCAC was correct that a claimant may recover benefits when the employment aggravates, accelerates, or combines with a preexisting condition to produce a personal injury. See *Pierce v General Motors Corp*, 443 Mich 137, 144; 504 NW2d 648 (1993). However, to establish a compensable work-related injury, a claimant must prove that the injury is medically distinguishable from any preexisting nonwork-related condition. See *Rakestraw v General Dynamics Land Systems, Inc*, 469 Mich 220, 222; 666 NW2d 199 (2003).³ Aggravation of the symptoms of a non-work-

² To the extent plaintiff's theory at trial was that it was only the incident of October 6, 2000, that caused his osteitis pubis, we question whether plaintiff should have been allowed to assert a new "aggravation" or "contribution" theory on appeal to the WCAC. See *Stein v Braun Engineering*, 245 Mich App 149, 154; 626 NW2d 907 (2001). The WCAC majority did not address this issue below. That failure was error, particularly in light of the fact that the dissenting commissioner voted to affirm the magistrate's decision, in part, because plaintiff failed to assert an aggravation theory at trial.

³ In our order granting defendant's application for leave to appeal, we directed the parties to address, the effect, if any, of this case on the WCAC's decision.

related condition is not compensable. *Id.* at 230-232. In this case, the fall from the ladder and plaintiff's "genetic predisposition" are not work-related. Further, it does not appear as if the WCAC distinguished between those traumas that plaintiff suffered during his professional hockey career, and those which he did not. To the extent plaintiff's disability is the result of the aggravation of the symptoms of nonwork-related conditions, compensation is not proper. Plaintiff was required to show that his condition was "medically distinguishable" from any preexisting non-work related condition. *Id.* at 222. In other words, if plaintiff's work-related hockey activities did not solely cause his osteitis pubis, then, under *Rakestraw, supra*, to be entitled to compensation, he was required to prove that, as a result of his work-related activities, his current osteitis pubis condition is "medically distinguishable" from the condition as it would have progressed as a result of the nonwork-related contributing factors. The WCAC did not recognize, or apply, this principle.

The WCAC's decision is vacated, and this matter is remanded for further proceedings consistent with this opinion. The WCAC shall determine whether plaintiff asserted an "aggravation" or "contribution" theory at trial, whether such a theory was properly raised on appeal, and, if so, whether an award of benefits is proper under *Rakestraw, supra*. We do not retain jurisdiction.

/s/ Stephen L. Borrello
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald